Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

MARGARET L. HOSTY, JENI S. PORCHE,
AND STEVEN P. BARBA,

Petitioners,

v.

PATRICIA CARTER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does an official of a public university violate the First and Fourteenth Amendments when she imposes a viewpoint-based system of prior restraint on the publication of a newspaper produced by adult students outside the university's educational curriculum?

2. Is an official of a public university entitled to qualified immunity from liability pursuant to 42 U.S.C. § 1983 when she imposes a viewpoint-based system of prior restraint on the publication of a newspaper produced by adult students outside the university's educational curriculum?

3. Does this Court's decision in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), either authorize an official of a public university to impose a viewpoint-based system of prior restraint on a newspaper produced by adult students outside the university's educational curriculum, or limit the otherwise clearly established right of adult university students to be free from such a system of prior restraint in the publication of such a newspaper?

PARTIES TO THE PROCEEDING

All parties to this proceeding appear in the caption of the case.

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Political correctness squelching campus speech, group says, Associated Press, Oct. 30, 2003 28

PETITION FOR A WRIT OF CERTIORARI

Petitioners Margaret L. Hosty, Jeni S. Porche and Steven P. Barba respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this proceeding.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit sitting *en banc* is reported at 412 F.3d 731 and is reprinted in the Appendix. The earlier decision of a panel of the Seventh Circuit is reported at 325 F.3d 945 and is reprinted in the Appendix. The opinions of the United States District Court for the Northern District of Illinois are reported at 174 F. Supp. 2d 782 and 2001 WL 1465621 and are reprinted in the Appendix.

JURISDICTION

The decision of a panel of the Court of Appeals was rendered on April 10, 2003. The Court of Appeals granted Respondent's petition for rehearing *en banc* on June 25, 2003. The judgment of the Court of Appeals, sitting *en banc*, was entered on June 20, 2005. This petition is timely filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

The First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 are reproduced in the Appendix at 60a-62a.

STATEMENT OF THE CASE

1. Statement of Facts

Petitioners Jeni S. Porche, Margaret L. Hosty and Steven P. Barba served, respectively, as editor-in-chief, managing editor, and staff reporter of the *Innovator*, a student-operated newspaper at Governors State University (the "University") in University Park, Illinois. App. 26a; *see also* App. 2a-3a.[1] The University is a publicly funded institution of higher education chartered by the Illinois General Assembly. Its Board of Trustees is appointed by the Governor, with the exception of one student member, who is elected by the student body. App. 50a; *see also* App. 3a. The University offers undergraduate courses leading to completion of a baccalaureate degree and graduate level courses leading to a master's degree. *See Governors State University, Facts & Figures*, www.govst.edu/aboutgsu/t_aboutgsu.asp?id=204 (last visited Sept. 9, 2005) ("*Governors State University, Facts & Figures*").

The University admits only students who are, in effect, in their junior or senior years of undergraduate study. For admission to the University, a prospective student must

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[1] References to the Appendix to this Petition are denoted as "App." The decision below was rendered in the context of Respondent's motion for summary judgment, in which she argued that she was entitled to qualified immunity from liability pursuant to 42 U.S.C. § 1983. Accordingly, "[b]ecause this case arises in the posture of a motion for summary judgment, [this Court is] required to view all facts and draw all reasonable inferences in favor of the nonmoving party." *Brosseau v. Haugen*, 125 S. Ct. 596, 597 n.2 (2004). *See also, e.g., Behrens v. Pelletier*, 516 U.S. 299, 309 (1996) ("the court looks to the evidence before it (in the light most favorable to the plaintiff) when conducting the [qualified immunity] inquiry"); *Harlow v. Fitzgerald*, 457 U.S. 800, 816 n.26 (1982) ("a court ordinarily must look at the record in the light most favorable to the party opposing [qualified immunity], drawing all inferences favorable to that party").

possess at least an associate's degree from another institution of higher education or, alternatively, must have earned at least sixty semester hours of academic credit at another such institution. *See Governors State University, Undergraduate Admissions Requirements*, www.govst.edu/apply/undergrad.htm (last visited Sept. 9, 2005). In total, the University offers some forty-seven degree programs at the undergraduate and graduate level. *See Governors State University, Facts & Figures*. Student enrollment is approximately 6,000. *See id.* The average age of students at the University, which describes itself as a "campus for working adults," is thirty-three. *Governors State University, About GSU,* www.govst.edu/aboutgsu/t_aboutgsu.asp?id=191 (last visited Sept. 9, 2005); *Governors State University, Facts & Figures.* All three Petitioners were older than twenty-one at all times relevant to this proceeding, *see* Dep. of M. Hosty, Aug. 2, 2001, at 5:15-18; Dep. of J. Porche, Aug. 2, 2001, at 5:15-18; Dep. of S. Barba, Aug. 8, 2001, at 5:20-21.

Petitioners were appointed to their respective editorial positions at the *Innovator* by the University's Student Communications Media Board (the "SCMB") in May 2000. App. 26a; *see also* App. 11a. The SCMB, the members of which were selected by the Student Senate, also approved the *Innovator*'s budget. App. 11a. The costs incurred in publishing the *Innovator* are funded by an "activity fee" paid by all University students as well as advertising revenues generated by the newspaper. *See* App. 11a; *see also* App. 26a.[2] Pursuant to a contract with a private printing company,

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[2] In the university context, student activity fees are typically mandatory student assessments and the money collected "goes to a special fund from which any group of students with [university recognition] can draw for purposes consistent with the University's educational mission; and to the extent the student is interested in speech, withdrawal is permitted to cover the whole spectrum of speech." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 841 (1995); *see also id.* at 851 (O'Connor, J.,

the *Innovator* was to be published on a bi-monthly basis. App. 36a; *see also* App. 2a, 27a.

Pursuant to the University's established practices and policies, the student staff of the *Innovator* and other student-operated publications retained unfettered authority to "'determine [the] content and format of their respective publications *without censorship or advance approval.*'" App. 26a (citation omitted); *see also* App. 11a, 35a. Participation on the *Innovator*'s staff was a voluntary, extracurricular activity unconnected to any particular course of study or classroom activity. App. 8a; *see also* App. 24a, 47a. Although the newspaper had an adviser who also served on the University's faculty, he "did not make content decisions" but instead reviewed stories intended for publication at the request of the *Innovator*'s editors to advise them "on issues of journalistic standards and ethics." App. 27a, 35a. Thus, "the student editors and writers [were] given complete editorial control over the newspaper, including its subject matter and content." App. 35a. Indeed, as the University president acknowledged, "the newspaper would be reviewed, looked at by the faculty advisor but in no sense would the faculty advisor have a right to approve." Dep. of S. Fagan, Aug. 9, 2001, at 58:11-14; *see also id.* at 59:4-8 ("There may be some process of review where the faculty

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concurring in judgment) ("Unlike moneys dispensed from state or federal treasuries, the Student Activities Fund is collected from students who themselves administer the fund and select qualifying recipients only from among those who originally paid the fee."); *see generally Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000) (upholding constitutionality of student activity fee mechanism against First Amendment challenge where funds are disbursed to campus organizations on viewpoint-neutral basis and distinguishing circumstances in which "the challenged speech . . . [is] financed by tuition dollars and the University and its officials [are] responsible for its content" such that "the case might be evaluated on the premise that the government itself is the speaker").

advisor works with the students to make suggestions, but I don't think the advisor has a right to approve in the sense of preventing the newspaper from being printed."). The *Innovator* itself proclaims on its masthead that it "is edited and published by the students" and that the "views expressed in" the newspaper "may not reflect the views . . . of Governors State University, and should not be regarded as such." Dep. of J. Porche, Exh. 3, at 3.

Between July and November 2000, the *Innovator* published four issues, Dep. of J. Porche, Aug. 2, 2001, at 31:21-32:17, all of which included articles that addressed controversial issues of importance to the University community, *see* App. 20a. One such article singled out the dean of the University's College of Arts and Sciences for particular criticism in the wake of the University's decision not to renew the teaching contract of the *Innovator*'s adviser. App. 2a. A column published in the newspaper rebuked the University's financial aid office, *see* Dep. of J. Porche, Exh. 3, at 4, which is supervised by Respondent Patricia Carter, the University's Dean of Student Affairs and Services, *see* Dep. of P. Carter, Aug. 9, 2001, at 25:7. Another article reported student complaints lodged against the coordinator of the University's English Department, including a lack of varied course offerings, the hiring of unqualified instructors and racial bias in grading. *See* App. 2a.

In the wake of the publication of such articles, the University's president and the dean of the College issued public statements "accusing the *Innovator* of irresponsible and defamatory journalism." App. 2a. The University's president complained that the newspaper had "excoriated some members of the university faculty and administration (myself included)." Dep. of S. Fagan, Exh. 2. The president further alleged that the newspaper's reporting, which he characterized as "one-sided," "inaccurate," and "insulting,"